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Attorneys for Plaintiff Mrs. Fields Franchising, LLC

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MRS. FIELDS FRANCHISING, LLC,
a Delaware limited liability company,

Plaintiff,

vs.

BEKTROM FOODS, INC.,
a North Dakota corporation,

Defendant.

ANSWER TO COUNTERCLAIM

Case No. 2:14-cv-00776-BSJ

Judge Bruce S. Jenkins

Plaintiff Mrs. Fields Franchising, LLC (“MFF”), by and through its counsel of record,
Rod N. Andreason and Kirton McConkie, hereby responds to the Counterclaim (the

“Counterclaim”) of defendant Bektrom Foods, Inc. (“Bektrom”) as follows:

PARTIES

1. MFF admits the allegations of Paragraph 1 of the Counterclaim.
2. MFF admits the allegations of Paragraph 2 of the Counterclaim.

JURISDICTION AND VENUE

3. MFF admits the allegations of Paragraph 3 of the Counterclaim.
4. MFF admits the allegations of Paragraph 4 of the Counterclaim.
5. MFF admits the allegations of Paragraph 5 of the Counterclaim.

GENERAL ALLEGATIONS

6. Responding to the allegations of Paragraph 6 of the Counterclaim, MFF admits that Bektrom’s signature on the License Agreement dated as of June 28, 2011 appears to be dated as of June 28, 2011 and otherwise denies the allegations of Paragraph 6.

7. Responding to the allegations of Paragraph 7 of the Counterclaim, MFF asserts that the License Agreement speaks for itself and denies any characterizations in Paragraph 7 that are inconsistent with the express terms of the License Agreement.

8. Responding to the allegations of Paragraph 8 of the Counterclaim, MFF asserts that the License Agreement speaks for itself and denies any characterizations in Paragraph 8 that are inconsistent with the express terms of the License Agreement.

9. Responding to the allegations of Paragraph 9 of the Counterclaim, MFF asserts that the License Agreement speaks for itself and denies any characterizations in Paragraph 9 that are inconsistent with the express terms of the License Agreement.

10. Responding to the allegations of Paragraph 10 of the Counterclaim, MFF asserts that the allegations lack any specificity and are conclusory, and additionally denies the allegations of Paragraph 10.

FIRST COUNTERCLAIM

11. MFF incorporates by reference its responses to paragraphs 1 through 10, above.

12. Paragraph 12 of the Counterclaim contains purported legal conclusions to which no response is required.

13. Paragraph 13 of the Counterclaim contains purported legal conclusions to which no response is required.

14. MFF denies the allegations of Paragraph 14 of the Counterclaim.

15. MFF denies the allegations of Paragraph 15 of the Counterclaim.

16. MFF denies the allegations of Paragraph 16 of the Counterclaim.

FIRST AFFIRMATIVE DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrines of waiver, estoppel, ratification, laches, and/or acquiescence.

THIRD AFFIRMATIVE DEFENSE

The Counterclaim is barred because Bektrom has failed to mitigate its damages, if any.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the first breach rule, including, but not limited to, the breach of the covenant of good faith and fair dealing.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by Bektrom's failure to perform a condition precedent.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaim is subject to setoff and/or offset.

SEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

MTF expressly reserves the right to assert additional defenses, by way of affirmative defenses, counterclaims and/or third-party claims, as additional facts are disclosed in the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, MTF prays as follows:

1. That the Counterclaim against MTF be dismissed with prejudice and Bektrom take nothing therefrom;
2. For an award of its reasonable attorneys' fees and costs incurred in defending against the Counterclaim pursuant to Utah Code Ann. § 78B-5-825; and

3. For such other and further relief as the Court may deem just and proper.

DATED this 25th day of February, 2015

Respectfully submitted,

KIRTON McCONKIE

/s/ Adam M. Kaas
Rod N. Andreason
Adam M. Kaas

Avery Samet
STORCH AMINI & MUNVES PC

*Attorneys for Plaintiff Mrs. Fields
Franchising, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2015, I caused a true and correct copy of the foregoing **ANSWER TO COUNTERCLAIM** to be delivered by the method indicated below to the following:

<input type="checkbox"/>	U.S. MAIL	David M. Bennion
<input type="checkbox"/>	HAND DELIVERY	<i>dbennion@parsonsbehle.com</i>
<input type="checkbox"/>	FAX TRANSMISSION	Zack L. Winzeler
<input type="checkbox"/>	FEDERAL EXPRESS	<i>zwinzeler@parsonsbehle.com</i>
<input checked="" type="checkbox"/>	CM/ECF	Parsons Behle & Latimer 201 South Main Street, Suite 1800 Salt Lake City, UT 84111

/s/ Adam M. Kaas